

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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PATRICK VARGAS,

Plaintiff,

v.

CITY OF TRACY; SOUTH SAN  
JOAQUIN COUNTY FIRE  
AUTHORITY; RANDALL BRADLEY,  
in his individual and  
official capacities; and DOES 1  
through 20, inclusive,

Defendants.

No. 2:22-cv-01454 WBS CSK

MEMORANDUM AND ORDER RE:  
DEFENDANTS' MOTIONS FOR  
SUMMARY JUDGMENT

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Plaintiff Patrick Vargas brought this action under 42 U.S.C. § 1983 and California state law against defendants City of Tracy ("City"), South San Joaquin County Fire Authority ("SSJC Fire Authority" or "Fire Authority"), and Randall Bradley. (Third Am. Compl. ("TAC") (Docket No. 37).) Defendants move for summary judgment. (Docket Nos. 99-100 ("City MSJ"), No. 101 ("Bradley MSJ"), No. 102 ("Fire Authority MSJ").)

1 I. Facts

2 Plaintiff began working as a firefighter for the Tracy  
3 Rural Fire Department in 1994. (See Patrick Vargas Dep. at  
4 36:17-37:1.)<sup>1</sup> In 1999, the City of Tracy Fire Department and the  
5 Tracy Rural Fire Department merged to form a "joint powers  
6 authority" called the South County Fire Authority.<sup>2</sup> (Patrick  
7 Vargas Dep. at 37:9-14; Bradley Dep. at 33:18-22, 46:22-23.) As  
8 a result of this merger, plaintiff became an employee of the City  
9 of Tracy. (Patrick Vargas Dep. at 36:19-37:3.) Plaintiff was  
10 promoted to interim Division Chief in 2015, to Battalion Chief in  
11 2017, and to Division Chief later in 2017, a position he held  
12 until he was terminated in 2022. (Id. at 21:17-22.)

13 Defendant Bradley was hired as Fire Chief for the City  
14 of Tracy in December 2015 and then served as interim and  
15 permanent City Manager for the City from approximately October  
16 2017 to January 2019. (Bradley Dep. at 49:3-14, 70:9-13, 79:19-  
17 21, 82:1-10.) During this time period, Bradley advocated for  
18 restructuring the South County Fire Authority into a "strong"  
19 joint powers authority independent of the City, and ultimately  
20 convinced the City Council to adopt this proposal (hereinafter  
21 "the Plan"). (See Bradley Dep. at 55:6-61:14, 67:5-12.)

22 Pursuant to the Plan, the existing South County Fire  
23 Authority was dissolved and a new joint powers authority  
24 independent of the City -- defendant South San Joaquin County

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25 <sup>1</sup> The depositions and accompanying exhibits cited  
26 throughout this Order were lodged with the court.

27 <sup>2</sup> A joint powers authority is a partnership between two  
28 public agencies to either jointly manage an endeavor or form a  
new public agency. (Bradley Dep. at 33:23-34:6.)

1 Fire Authority ("SSJC Fire Authority" or "Fire Authority") -- was  
2 established in 2018. (Bradley Dep. at 80:23-83:2.) Bradley left  
3 his position as City Manager in 2019 to serve as Fire Chief of  
4 the SSJC Fire Authority. (See Ex. 6 to Bradley Dep.) From the  
5 establishment of the SSJC Fire Authority to January 1, 2022, the  
6 City of Tracy remained the employer of record for plaintiff,  
7 Bradley, and other SSJC Fire Authority employees. (See id. at  
8 82:1-17; Murdaugh Dep. at 27:13-28:14.) On January 2, 2022, the  
9 SSJC Fire Authority became the employer of record. (See id.)

10 Plaintiff's wife, Veronica Vargas, was a member of the  
11 Tracy City Council from 2014 to 2022. (See Veronica Vargas Dep.  
12 at 30:20-23, 95:15-96:6.) In her role as city councilor, she was  
13 involved in the discussions over restructuring the joint powers  
14 authority, which began during Bradley's tenure as City Manager.  
15 (See id. at 60:13-25.) Ms. Vargas expressed concern over the  
16 Plan's feasibility and was unsatisfied with the answers she was  
17 given concerning it. (Id. at 70:18-71:10, 73:16-74:7, 75:17-  
18 78:6, 100:24-103:4.) Ms. Vargas continued to be involved in  
19 implementation of the Plan through her role in the City Council  
20 as late as September 1, 2020. (See Pl.'s Ex. A (Docket No. 104-8  
21 at 5-13) at 5.)

22 Plaintiff and his wife largely avoided discussing the  
23 Plan with each other to avoid causing tension in their marriage.  
24 (See Patrick Vargas Dep. at 108:23-109:12, 138:6-142:23; Veronica  
25 Vargas Dep. at 230:9-232:12.) Despite this, plaintiff contends,  
26 Bradley confronted plaintiff about his purported discussion of  
27 the Plan with Ms. Vargas in June or July 2019, telling plaintiff  
28 that he was in a "precarious position" and was being

1 "marginaliz[ed]" because of Ms. Vargas. (See Patrick Vargas Dep.  
2 at 105:20-106:9.)

3 Bradley brought allegations of timecard fraud to Human  
4 Resources Director Kimberly Murdaugh on September 15, 2020 and  
5 third-party investigators ultimately found the allegation  
6 unsupported on March 23, 2021. (Murdaugh Dep. at 75:12-76:5.)  
7 On March 31, 2021, Bradley contacted Ms. Murdaugh and implored  
8 her to further investigate plaintiff, and harassment allegations  
9 against plaintiff surfaced on April 7, 2021, prompting a second  
10 investigation during which Bradley placed plaintiff on paid  
11 administrative leave. (See Docket No. 104-2 at 288; Docket No.  
12 104-4 at 63-67; Ex. 20 to Bradley Dep.; Murdaugh Dep. at 150:9-  
13 23, 179:10-14.) Bradley allegedly pushed to expand the scope of  
14 the investigation, which concerned Ms. Murdaugh because there  
15 were no other specific allegations of misconduct and Bradley's  
16 suggested course of action did not align with existing City  
17 policies. (Murdaugh Dep. at 133:13-134:16, 136:18-137:4.)

18 The harassment investigation -- which, according to Ms.  
19 Murdaugh, ultimately exceeded the original investigatory scope  
20 she established -- concluded in August 2021 and sustained  
21 allegations of harassment and misconduct, but City officials had  
22 concerns about the integrity of the findings and commissioned an  
23 additional investigation into the harassment investigation. (See  
24 Exs. 18, 20 to Murdaugh Dep.; Murdaugh Dep. at 132:18-134:22,  
25 167:5-17, 180:16-181:4, 183:20-21, 195:24-197:20, 199:6-10.)  
26 This additional investigation was completed in December 2021 and  
27 found that the harassment investigation used unreliable  
28 methodologies and was biased because "Bradley's participation in

1 the investigation as both the decisionmaker and a witness  
2 evidences the investigation was not conducted in an impartial  
3 manner.” (See Ex. 22 to Murdaugh Dep.) City officials concluded  
4 that the harassment investigation did not provide a basis to  
5 terminate plaintiff and directed that plaintiff be removed from  
6 administrative leave and return to work, but Bradley terminated  
7 plaintiff on January 12, 2022. (See Ex. 21 to Murdaugh Dep.;  
8 Murdaugh Dep. at 203:22-207:25; Bradley Dep. at 386:10-24,  
9 395:13-396:24.)

## 10 II. Discussion

11 Plaintiff brings three claims under § 1983: the first  
12 claim alleging First Amendment retaliation based on speech, the  
13 second claim alleging First Amendment retaliation based on  
14 association, and the third claim alleging deprivation of  
15 procedural due process. (TAC ¶¶ 127-52.) Plaintiff also brings  
16 two state law claims: the fourth claim alleging violation of the  
17 California Firefighters Procedural Bill of Rights Act, Cal. Gov’t  
18 Code § 3252 et seq.; and the fifth claim alleging violation of  
19 California Labor Code § 98.6. (Id. ¶¶ 153-74.)

20 On their motions for summary judgment, defendants bear  
21 the burden of persuasion to show that there is no genuine dispute  
22 of material fact on plaintiff’s claims. See Nissan Fire & Marine  
23 Ins. Co. v. Fritz Companies, Inc., 210 F.3d 1099, 1102 (9th Cir.  
24 2000).

### 25 A. Bradley and the SSJC Fire Authority

#### 26 1. Section 1983

##### 27 a. Monell Liability

28 Plaintiff brings all three constitutional claims

1 against the SSJC Fire Authority, which is a municipal entity.  
2 Because § 1983 does not provide for vicarious liability, local  
3 governments "may not be sued under § 1983 for an injury inflicted  
4 solely by its employees or agents." Monell v. Dep't of Soc.  
5 Servs. of N.Y., 436 U.S. 658, 693 (1978). "Instead, it is when  
6 execution of a government's policy or custom, whether made by its  
7 lawmakers or by those whose edicts or acts may fairly be said to  
8 represent official policy, inflicts the injury that the  
9 government as an entity is responsible under § 1983." Id.

10 Plaintiff bases his claims against the SSJC Fire  
11 Authority on the theory that Bradley was a "final policymaker."  
12 "[W]here action is directed by those who establish governmental  
13 policy, the municipality is equally responsible whether that  
14 action is to be taken only once or to be taken repeatedly."  
15 Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986).

16 In support of its argument that Bradley was not a final  
17 policymaker, the SSJC Fire Authority cites only Bradley's  
18 Employment Agreement, which states that Bradley was under the  
19 authority of the Fire Authority's Board. However, the cited  
20 document undercuts rather than supports the Fire Authority's  
21 position, as it states that Bradley "[i]mplements and oversees  
22 all aspects of personnel and labor relations with [Fire]  
23 Authority employees, including personnel management, discipline,  
24 handling grievances, negotiating labor agreements, and meeting  
25 and conferring with the [Fire] Authority's recognized bargaining  
26 units." (Ex. 6 to Bradley Dep. at 10.) That document gives no  
27 indication that Bradley's authority over employment matters was  
28 subject to Board control or approval. (See generally id.)

1           The absence of Board oversight tends to be supported by  
2     the evidence before the court concerning plaintiff's termination,  
3     which Bradley apparently decided upon and effectuated without any  
4     Board input. (See Bradley Dep. at 393:11-22, 395:13-398:3.)  
5     Accordingly, because there is a genuine dispute of material fact  
6     as to whether Bradley possessed final policymaking authority over  
7     employment decisions, the SSJC Fire Authority's motion for  
8     summary judgment will not be granted based upon Monell.

9           b.     First Amendment Retaliation Based on Speech

10          Plaintiff contends that Bradley, on behalf of the Fire  
11     Authority, took adverse employment actions against him based on  
12     Bradley's perception that plaintiff spoke negatively of the Plan  
13     to his wife, Ms. Vargas, who was a city councilor and was  
14     involved in the adoption and implementation of the Plan.  
15     Regardless of whether plaintiff actually spoke to his wife about  
16     the Plan, a retaliation claim based on "perceived speech" --  
17     i.e., speech that the plaintiff was incorrectly thought to have  
18     made -- is cognizable under the First Amendment. See Heffernan  
19     v. City of Paterson, 578 U.S. 266, 268 (2016) (government  
20     employee could maintain a First Amendment retaliation claim where  
21     he was demoted because "the official believed, but incorrectly  
22     believed, that the employee had supported a particular candidate  
23     for mayor") (emphasis in original); DeCrane v. Eckart, 12 F.4th  
24     586, 594 (6th Cir. 2021) (recognizing First Amendment retaliation  
25     claim premised on erroneously "perceived speech" based on  
26     Heffernan).

27          "[T]he First Amendment prohibits government officials  
28     from subjecting individuals to retaliatory actions after the fact

1 for having engaged in protected speech.'" Adams v. County of  
2 Sacramento, 116 F.4th 1004, 1010 (9th Cir. 2024) (quoting Houston  
3 Cnty. Coll. Sys. v. Wilson, 595 U.S. 468, 474 (2022)). Under the  
4 test established by Pickering v. Board of Education, 391 U.S. 563  
5 (1968), "it is the plaintiff's burden to establish that (1) [he]  
6 spoke on a matter of public concern; (2) [he] spoke as a private  
7 citizen rather than a public employee; and (3) the relevant  
8 speech was a substantial or motivating factor in the adverse  
9 employment action." Adams, 116 F.4th at 1010 (cleaned up).<sup>3</sup> "If  
10 a plaintiff establishes such a prima facie case, the burden  
11 shifts to the government to demonstrate that (4) it had an  
12 adequate justification for treating the employee differently than  
13 other members of the general public; or (5) it would have taken  
14 the adverse employment action even absent the protected speech."  
15 Id. (cleaned up).

16 To demonstrate that retaliation was a "substantial or  
17 motivating factor behind an adverse employment action," a  
18 plaintiff can "(1) introduce evidence that the speech and adverse  
19 action were proximate in time, such that a jury could infer that  
20 the action took place in retaliation for the speech; (2)  
21 introduce evidence that the employer expressed opposition to the  
22 speech; or (3) introduce evidence that the proffered explanations  
23 for the adverse action were false and pretextual." Anthoine v.  
24 N. Cent. Ctys. Consortium, 605 F.3d 740, 750 (9th Cir. 2010).  
25 "As with proof of motive in other contexts, this element of a  
26 First Amendment retaliation suit . . . involves questions of fact

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27 <sup>3</sup> Defendants do not meaningfully address the first or  
28 second Pickering factors.



1 that normally should be left for trial.” Ulrich v. City & County  
2 of San Francisco, 308 F.3d 968, 979-80 (9th Cir. 2002) (internal  
3 citations omitted).

4 Here, plaintiff has presented sufficient evidence of  
5 retaliatory motive to survive summary judgment. As laid out in  
6 detail above, there is evidence indicating that Bradley expressed  
7 opposition to plaintiff’s perceived communication with Ms. Vargas  
8 concerning the Plan (see Patrick Vargas Dep. at 105:20-106:9) and  
9 that there was a close proximity in time between Ms. Vargas’  
10 actions on the City Council regarding the Plan and the chain of  
11 events beginning with Bradley’s allegation of timecard fraud (see  
12 Pl.’s Ex. A at 5; Murdaugh Dep. at 75:12-76:5).

13 There is also evidence tending to show that Bradley’s  
14 proffered reason for plaintiff’s termination was pretextual.  
15 After an independent investigation found that the harassment  
16 investigation into plaintiff was biased by Bradley’s involvement,  
17 City officials concluded that the harassment investigation’s  
18 findings did not warrant termination and instructed Bradley to  
19 remove plaintiff from administrative leave, but Bradley  
20 terminated plaintiff regardless. (See Murdaugh Dep. at 203:22-  
21 207:25, 213:19-214:23; Ex. 22 to Murdaugh Dep. at 3; Bradley Dep.  
22 at 386:10-387:16, 395:13-396:24.) This evidence plainly  
23 establishes a genuine dispute of material fact as to whether  
24 plaintiff’s termination was based on Bradley’s retaliatory animus  
25 for plaintiff’s perceived speech and connection with Ms. Vargas.  
26 See Anthoine, 605 F.3d at 750.

27 Further, Bradley and the Fire Authority have not  
28 pointed to any evidence that taking adverse employment action in

1 response to plaintiff's speech served legitimate operational  
2 purposes. See Moser v. Las Vegas Metro. Police Dep't, 984 F.3d  
3 900, 908-09 (9th Cir. 2021) ("mere speculation that an employee's  
4 speech will cause disruption" was insufficient to demonstrate the  
5 government had a legitimate interest under Pickering).

6 Accordingly, Bradley and the SSJC Fire Authority's  
7 motions for summary judgment on the first claim for First  
8 Amendment retaliation based on plaintiff's speech must be denied.

9 c. First Amendment Retaliation Based on  
10 Association

11 Plaintiff alleges that Bradley and the SSJC Fire  
12 Authority retaliated against him based on his association with  
13 his wife. Though the Ninth Circuit has not squarely addressed  
14 this type of claim, the Second Circuit has held that "a spouse's  
15 claim that adverse action was taken solely against that spouse in  
16 retaliation for conduct of the other spouse should be analyzed as  
17 a claimed violation of a First Amendment right of intimate  
18 association." See Adler v. Pataki, 185 F.3d 35, 44 (2d Cir.  
19 1999); see also Freeman v. County of Riverside, No. 18-cv-2171  
20 JFW KX, 2019 WL 7905733, at \*6 (C.D. Cal. Apr. 5, 2019) (quoting  
21 Lewis v. Eufaula City Bd. of Educ., 922 F. Supp. 2d 1291, 1302  
22 (M.D. Ala. 2012)) ("[T]he First Amendment may also be violated  
23 where the speech that invoked the government's retaliatory  
24 response was not made by the plaintiff herself, but rather by a  
25 person in a close relationship with the plaintiff, and the  
26 government retaliated against the plaintiff for her perceived  
27 association with the other person and that person's speech.");  
28 Isakhanova v. Muniz, No. 15-cv-03759 TEH, 2016 WL 1640649, at \*4

1 (N.D. Cal. Apr. 26, 2016) (same).

2 This holding aligns with Ninth Circuit and Supreme  
3 Court case law explaining that a claim for “expressive  
4 association” via a close family relationship such as marriage is  
5 cognizable under the First Amendment. See, e.g., Board of Dir.  
6 v. Rotary Club, 481 U.S. 537, 545 (1987); Erotic Serv. Provider  
7 Legal Educ. & Rsch. Project v. Gascon, 880 F.3d 450, 458 (9th  
8 Cir.), amended, 881 F.3d 792 (9th Cir. 2018); Lee v. City of Los  
9 Angeles, 250 F.3d 668, 685 (9th Cir. 2001); IDK, Inc. v. Clark  
10 County, 836 F.2d 1185, 1194 (9th Cir. 1988).

11 Bradley and the Fire Authority’s arguments concerning  
12 this claim are essentially the same as those discussed above with  
13 respect to the First Amendment retaliation claim based on  
14 plaintiff’s speech -- i.e., the third, fourth, and fifth elements  
15 of the Pickering analysis. (See Fire Authority Reply at 10-12;  
16 Bradley Reply at 8-12.) See also Adler, 185 F.3d at 44 (applying  
17 Pickering test to First Amendment retaliation claim based on  
18 association with spouse). Based on the evidence discussed above,  
19 there are genuine disputes of material fact concerning whether  
20 Bradley took retaliatory employment actions in response to  
21 plaintiff’s association with his wife, whether those adverse  
22 actions were otherwise justified, and whether those adverse  
23 actions would have been taken absent retaliatory intent.  
24 Accordingly, Bradley and the SSJC Fire Authority’s motions for  
25 summary judgment must also be denied on the second claim for  
26 First Amendment retaliation based on association.

27 d. Procedural Due Process

28 Plaintiff does not oppose defendants’ request for

1 summary judgment on the procedural due process claim. (See  
2 Bradley Opp'n (Docket No. 105) at 32; Fire Authority Opp'n  
3 (Docket No. 106) at 31-32.) Accordingly, Bradley and the SSJC  
4 Fire Authority's motions for summary judgment will be granted as  
5 to the third claim for deprivation of procedural due process.

6 e. Qualified Immunity

7 "Qualified immunity is applicable unless the official's  
8 conduct violated a clearly established constitutional right."  
9 Pearson v. Callahan, 555 U.S. 223, 232 (2009). "The relevant,  
10 dispositive inquiry in determining whether a right is clearly  
11 established is whether it would be clear to a reasonable officer  
12 that his conduct was unlawful in the situation he confronted."  
13 Saucier v. Katz, 533 U.S. 194, 202 (2001).

14 Bradley argues perfunctorily that he is entitled to  
15 qualified immunity but fails to present any argument concerning  
16 why the rights at issue here were not "clearly established" under  
17 the applicable standard. Accordingly, he has not met his burden  
18 of persuasion and qualified immunity will be denied.

19 2. State Law Claims

20 a. Firefighters Procedural Bill of Rights Act

21 Plaintiff's fourth claim alleges violation of several  
22 provisions of the California Firefighters Procedural Bill of  
23 Rights Act, Cal. Gov't Code § 3252 et seq. This statute sets  
24 forth a hodgepodge of procedural rights, which for unexplained  
25 reasons apply only to firefighters.<sup>4</sup> Needless to say, if this

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26 <sup>4</sup> For example, plaintiff pleads the provisions of the Act  
27 which provide (1) that "no firefighter shall be prohibited from  
28 engaging, or be coerced or required to engage, in political  
activity," Cal. Gov't Code § 3252(a); (2) that "[a] firefighter

1 claim in its entirety remains in the case it will ultimately  
2 convert the trial from an inquiry into whether defendants  
3 deprived plaintiff of his constitutional rights under the First  
4 Amendment into an exposition of whether plaintiff was accorded  
5 all of the procedural amenities the California legislature has  
6 conferred upon him as a firefighter.

7 Bradley and the Fire Authority do not address all  
8 statutory provisions relied upon by plaintiff. In particular,  
9 they do not appear to address the requirement under § 3254(f) to  
10 provide written notice within 30 days of any decision to impose  
11 discipline. (See Bradley MSJ at 28-32; Fire Authority MSJ at 28-  
12 32.)

13 With respect to the administrative appeal process  
14 requirement under § 3254(b), defendants argue that because  
15 plaintiff was an at-will employee, he possessed no administrative  
16

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17 shall not be subjected to punitive action, or denied promotion,  
18 or be threatened with that treatment, because of the lawful  
19 exercise of the rights granted under this chapter, or the  
20 exercise of any rights under any existing administrative  
21 grievance procedure," Cal. Gov't Code § 3254(a); (3) that  
22 "[p]unitive action . . . shall not be undertaken by any employing  
23 department or licensing or certifying agency against any  
24 firefighter who has successfully completed the probationary  
25 period without providing the firefighter with an opportunity for  
26 administrative appeal," Cal. Gov't Code § 3254(b); and (4) that  
27 "[i]f, after investigation and any predisciplinary response or  
28 procedure, the employing department or licensing or certifying  
agency decides to impose discipline, that agency shall notify the  
firefighter in writing of its decision to impose discipline  
within 30 days of its decision, but not less than 48 hours prior  
to imposing the discipline," Cal. Gov't Code § 3254(f). In  
opposition to the motions, plaintiff also argues that he  
maintains a claim under a separate provision of the Firefighters  
Procedural Bill of Rights Act, Cal. Gov't Code § 3254(d).  
However, plaintiff did not plead his claim under that section.  
(See TAC ¶ 153.)

1 appeal rights. However, defendants have not cited, nor is the  
2 court aware of, any evidence or authority indicating that  
3 plaintiff's at-will status terminated his statutory rights under  
4 the Firefighters Procedural Bill of Rights Act. See County of  
5 Riverside v. Superior Ct., 27 Cal. 4th 793, 806-07 (2002)  
6 (analogous Public Safety Officers Procedural Bill of Rights Act  
7 "is, like many other statutory schemes enacted for the protection  
8 of a class of employees, not subject to blanket waiver," and  
9 therefore waiver of rights under Bill of Rights Act must be "a  
10 voluntary and knowing act done with sufficient awareness of the  
11 relevant circumstances and likely consequences"); Vincent v. City  
12 of Cal. City, No. 1:18-cv-00549 LJO JLT, 2018 WL 3524621, at \*5  
13 (E.D. Cal. July 20, 2018) (assuming Firefighters Procedural Bill  
14 of Rights Act applied to "at-will management employee").

15 Further, with respect to the requirement under §  
16 3252(a) that firefighters not be prohibited from or coerced into  
17 engaging in political activity, there is a genuine dispute of  
18 material fact precluding summary judgment. For instance, there  
19 is evidence suggesting that Bradley pressured plaintiff into  
20 trying to convince Ms. Vargas to stop questioning Bradley's plan  
21 in her role as city councilor. (See Patrick Vargas Dep. at  
22 105:20-108:12, 140:11-22.)

23 The court will not, and need not, address all of the  
24 portions of the Act pled by plaintiff, but for the reasons  
25 discussed above, Bradley and the SSJC Fire Authority's motions  
26 for summary judgment on the fourth claim under the Firefighters  
27 Procedural Bill of Rights Act will be denied.

b. Cal. Labor Code § 98.6

Bradley and the SSJC Fire Authority argue that they are entitled to statutory immunity under California Government Code § 820.2, which provides that “a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused”; and California Government Code § 815.2(b), which provides immunity to a public entity for the actions of an employee who is himself immune from liability. “[T]he burden rests with government defendants to demonstrate that they are entitled to § 820.2 immunity for a specific policy decision made by an employee who consciously balanced the decision’s risks and benefits.” Hernandez v. County of Tulare, 666 F.3d 631, 640 (9th Cir. 2012) (citing Johnson v. State, 69 Cal. 2d 782, 795 n.8 (1968)). Bradley and the Fire Authority have entirely failed to satisfy this burden. They merely state in conclusory fashion that they are entitled to statutory immunity, but do not engage in any analysis. Accordingly, immunity under § 820.2 (and derivative immunity under § 815.2(b)) will not be granted.

Plaintiff’s claim under § 98.6 is premised upon the alleged retaliation for plaintiff’s exercise of his First Amendment rights. (See TAC ¶ 169; Fire Authority Opp’n at 31.) See also Grinzi v. San Diego Hospice Corp., 120 Cal. App. 4th 72, 86 (2004) (discussing claim under § 98.6 premised on violation of a constitutional right); Napear v. Bonnevillle Int’l Corp., 669 F. Supp. 3d 948, 966 n.7 (E.D. Cal. 2023) (Drozdz, J.) (same). As explained above, plaintiff’s First Amendment claims survive

1 summary judgment. Thus, plaintiff's § 98.6 claim, premised on  
2 the alleged violation of his First Amendment rights, similarly  
3 survives summary judgment, and the court will deny Bradley and  
4 the Fire Authority's motions as to that claim.

5 B. The City

6 Plaintiff does not oppose the City's request for  
7 summary judgment on the third claim for procedural due process  
8 and fifth claim under Labor Code § 98.6. (See City Opp'n (Docket  
9 No. 104) at 45.) Accordingly, summary judgment in the City's  
10 favor will be granted on the third and fifth claims.

11 In contrast to Bradley and the SSJC Fire Authority, the  
12 City clearly cannot be held liable on any of plaintiff's  
13 remaining claims. With respect to the § 1983 claims, Bradley was  
14 not a final policymaker for the City under Monell. The City of  
15 Tracy Municipal Code establishes that the City Manager has "the  
16 power to control, order, and give directions to all heads of  
17 departments and to subordinate officers and employees of the  
18 City." City of Tracy Mun. Code § 2.08.060. The City's Personnel  
19 Rules designate the City Manager and Human Resources Director as  
20 the officials ultimately responsible for various personnel  
21 matters, including disciplinary action. (See Ex. 31 to Murdaugh  
22 Dep. at 1-3, 35-39.) Bradley therefore was not a final  
23 policymaker for the City. See Ellins v. City of Sierra Madre,  
24 710 F.3d 1049, 1066 (9th Cir. 2013) (municipal code provision and  
25 personnel rules delegating employment decisions to city manager  
26 established that city manager was final policymaker with respect  
27 to employment decisions).

28 Further, Bradley's employment agreement was with the



1 SSJC Fire Authority and he reported to the Fire Authority's  
2 Board, not to the City. (See Bradley Dep. at 363:3-9; Ex. 6 to  
3 Bradley Dep.) And based on the evidence already discussed above,  
4 Bradley -- not any City official -- was responsible for the  
5 alleged violations. Bradley allegedly expressed opposition to  
6 plaintiff's perceived speech. (See Patrick Vargas Dep. at  
7 105:20-106:9.) Bradley allegedly defied the limitations put in  
8 place by City policy and the City's Human Resources Director in  
9 order to influence the harassment investigation. (See Murdaugh  
10 Dep. at 132:18-134:22, 180:16-181:4; Ex. 22 to Murdaugh Dep. at  
11 3.) Bradley chose to place plaintiff on administrative leave  
12 during that investigation, only informing the City after deciding  
13 on that course of action. (See Ex. 20 to Bradley Dep.; Murdaugh  
14 Dep. at 150:9-151:23.)

15 City officials apparently tried to stymie Bradley's  
16 influence and ensure plaintiff was treated fairly by  
17 commissioning an independent investigation into the harassment  
18 investigation and, based on the results thereof, ordered Bradley  
19 to remove plaintiff from administrative leave and allow him to  
20 return to work. (See Exs. 20-22 to Murdaugh Dep.; Murdaugh Dep.  
21 at 132:19-134:22, 167:5-17, 195:24-199:10, 203:22-207:25, 213:19-  
22 214:23; Bradley Dep. at 386:10-24.) Bradley disregarded the  
23 City's instructions and terminated plaintiff shortly after the  
24 Fire Authority became plaintiff's employer of record. (See  
25 Bradley Dep. at 386:10-387:16, 395:13-396:24; Murdaugh Dep. at  
26 27:13-28:14.)


27 While the City did initiate the investigations in  
28 response to fraud and harassment allegations and made a

1 recommendation for a written reprimand following the conclusion  
2 of the final investigation (see Ex. 21 to Murdaugh Dep.), there  
3 is no indication that the City did so in a biased manner or  
4 violated applicable procedural protections. The City cannot be  
5 held responsible for Bradley's actions, which often appeared to  
6 contradict City policy and orders, merely because Bradley for a  
7 short period of time nominally remained an employee for purposes  
8 of the transition process for the newly autonomous SSJC Fire  
9 Authority. Accordingly, the City's motion for summary judgment  
10 will be granted in its entirety.

11 IT IS THEREFORE ORDERED that the City of Tracy's motion  
12 for summary judgment (Docket No. 99) be, and the same hereby is,  
13 GRANTED.

14 IT IS FURTHER ORDERED that Randall Bradley's motion for  
15 summary judgment (Docket No. 101) and the South San Joaquin  
16 County Fire Authority's motion for summary judgment (Docket No.  
17 102) be, and the same hereby are, GRANTED as to the third claim  
18 for deprivation of procedural due process under § 1983. The  
19 motions are DENIED in all other respects.

20 Dated: February 21, 2025

  
21 WILLIAM B. SHUBB  
22 UNITED STATES DISTRICT JUDGE  
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